

UPDATED INFORMATIVE DIGEST

There have been no changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Action.

The originally proposed text did not properly indicate proposed changes to the California Code of Regulations in underline and strikeout format. Changes made in the original emergency filing (OAL File Number 2016-0801-06E) were shown as existing text instead of being properly indicated in underline and strikeout format. To resolve this issue, CAEATFA sent out a notice and modified text wherein proposed changes were clearly indicated. This text was made available for public comment for 15 days.

There are no additional updates to the information included in the Notice of Proposed Action.

FINAL STATEMENT OF REASONS

California Alternative Energy and Advanced Transportation Financing Authority ("CAEATFA" or the "Authority")

Sales and Use Tax Exclusion ("STE") Program ("Program")

UPDATE OF INITIAL STATEMENT OF REASONS

The originally proposed text did not properly indicate proposed changes to the California Code of Regulations in underline and strikeout format. Changes made in the original emergency filing (OAL File Number 2016-0801-06E) were shown as existing text instead of being properly indicated in underline and strikeout format. To resolve this issue, CAEATFA sent out a notice and modified text wherein proposed changes were clearly indicated. This text was made available for public comment for 15 days.

There are no additional updates to the information included in the initial statement of reasons.

LOCAL MANDATE DETERMINATION

The proposed regulations do not impose any mandate on local agencies or school districts.

ALTERNATIVES DETERMINATION

The Authority has not identified any alternatives that would be more effective in carrying out the purpose for which the regulations are proposed, or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. Below is a description of the alternatives considered.

Alternatives Considered

Evaluation Methodology for Recycled Resource Extraction Projects

The Authority considered evaluating Recycled Resource Extraction Projects based on qualitative factors, such as whether the Project supports state efforts to increase diversion from landfill. However, the Authority found that using California Air Resource Board and U.S. EPA data to estimate GHG benefits of recycling would more accurately estimate the environmental benefits of Recycled Resource Extraction Projects, as required by Public Resource Code Section 26011.8(d)(4), and the net benefit to the state, per Public Resources Code Section 26011.8(d)(2), and is more in line with the evaluation methodology for Alternative Source and Advanced Transportation Technology Projects.

\$20 Million Cap (Sections 10032(a)(4)-(5))

The Authority considered capping Applicants at amounts between \$10-30 million. Past Applications were reviewed to determine an appropriate cap amount. \$20 million was chosen based on historical data; large Projects have only occasionally exceeded \$20 million. Therefore, the Authority determined that \$20 million most effectively balanced the competing needs of

ensuring equitable distribution of awards and incentivizing large transformational Projects which may have correspondingly large benefits to the state.

The Authority also considered capping each of the four statutory STE Application eligibility types (Advanced Transportation, Alternative Source, Advanced Manufacturing, and Recycled Resource Extraction) at \$25 million. This could in theory equitably distribute STE among Application types. However, Authority staff were concerned that that this could lead to oversubscription among some Application types, while there was sufficient STE available under other Application types, which would be an inefficient way to award the STE. In this scenario, qualified Applicants with projects that advance Program goals could be turned away while there is still STE available under the \$100 million Program cap. Authority staff determined that capping each of the four STE Application types at \$25 million did not allow enough flexibility to the Authority and potential Applicants.

Competitive Criteria (Sections 10032(a)(6)-(7))

The Authority considered reviewing Applications in a quarterly cycle, in which Applications are accepted and considered four times per year, rather than each month. A quarterly cycle would likely increase the number of Applications under consideration during each review period, which could allow a larger proportion of Applications to be ranked against each other. However, Authority staff determined that a quarterly Application cycle would not allow enough flexibility to meet the needs of California businesses which may not have time to wait for a quarterly Application approval.

The Authority considered ranking Applications based on their evaluation score in the event of Program oversubscription. The evaluation score is already used to quantify a Project's net benefits for the purposes of Program eligibility. Applicants must provide several pieces of information in their Application, such as information about their expected product sales and sales price, labor costs, production costs, and environmental benefits. This information is used to quantify the fiscal and environmental benefits of each Project to the state, which are expressed using a scoring system. In theory, when using an "evaluation score" ranking process, Projects with the greatest benefit to the state per dollar of STE provided would be ranked highest and awarded scarce STE. However, the evaluation score is a projection, and there is no way to ensure that each data point provided by Applicants is accurate. Additionally, due to the nascent nature of the technology being developed or used by many Applicants, many of the data points used to quantify Project benefits are estimates, and cannot be independently verified by Authority staff.

The Authority considered taking each Applicant's receipt of financial assistance from other State of California sources into account in the event of Program oversubscription. Using this alternative, Projects which have not received other State of California assistance would be considered first for an STE award. This could be considered equitable in that it distributes scarce State of California resources to the greatest number of companies. However, the Authority determined that this alternative could exclude companies with significant net benefits to the State of California and remove the ability to leverage and provide momentum to mutual State policy goals.

In the event of oversubscription, the Authority considered first awarding STE to Applicants that would not locate in California in the absence of the STE. This could be perceived as providing the greatest benefit to the State of California in that it keeps manufacturing in California rather than other states. However, the Authority staff determined that there would be no way to verify that an

Applicant would not locate in California if not for the STE award.

15% Purchase Requirement (Section 10035(b)(1))

The Authority considered implementing a 25% purchase requirement, rather than the proposed 15% purchase requirement. The Program originally had a 25% purchase requirement, which was eliminated due to the compliance burden it placed on both the Authority and Applicants. At the time, the Program had never faced oversubscription. Authority staff considered reinstating the 25% purchase requirement, but instead chose to impose a 15% requirement due to stakeholder feedback. Stakeholders were concerned that a 25% purchase requirement would be difficult for some businesses to comply with, and could effectively disqualify complex Projects that take significant time to build.

Environment Benefit Point Threshold

The Authority considered keeping the Alternative Source and Advanced Transportation environmental benefits scoring threshold at 100 points, and setting the Recycled Resource Extraction Project threshold at 20 points, in line with the already established Advanced Manufacturing threshold. However, the Authority determined that it would be most equitable to evaluate all Project types using the same scoring threshold, particularly given that the Legislature has not indicated an order of priority for the different types of eligible manufacturers.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE PUBLIC NOTICE PERIOD OF MAY 12, 2017 THROUGH JUNE 26, 2017

CAEATFA received no comments during the 45-day comment period.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE PUBLIC HEARING ON JUNE 27, 2017

CAEATFA received no comments during the public hearing held on June 27, 2017.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE AUGUST 29, 2017 THROUGH SEPTEMBER 15, 2017 PUBLIC NOTICE PERIOD THE MODIFIED TEXT WAS AVAILABLE TO THE PUBLIC

CAEATFA received no comments during the 15-day comment period.